

RECORDING REQUESTED BY:

City of Daly City
333 90th Street
Daly City, California 94015

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Berkeley Office
700 Heinz Avenue
Berkeley, California 94710
Attention: Barbara J. Cook, Chief
Northern California Coastal Cleanup
Operations Branch

DOC # 2002-208849

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Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder

Recorded By CALIFORNIA ENVIRONMENTAL



SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: San Mateo County Assessor's Parcel Numbers 005-330-330 and 005-330-390
a.k.a David R. Rowe Park)

This Covenant and Agreement ("Covenant") is made by and between the City of Daly City (the "Covenantor"), the current owner of property situated in Daly City, County of San Mateo, State of California, described as "Parcel 33 and Parcel 39 as described in that certain map entitled "Map of Midway Village", recorded on July 26, 1976, in Volume 91 at Page 46 of Maps of the County of San Mateo" and depicted in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 3.8 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by the Pacific Gas and Electric Company, Martin Service Center to the east and north, and the Midway Village Housing Complex to the west and south, in the County of San Mateo, State of California. This property is more specifically described as San Mateo County Assessor's Parcel Numbers: 005-330-330 and 005-330-390.

1.02. The Property has been remediated pursuant to a Removal Action Workplan and subsequent Explanation of Significant Differences developed pursuant to Chapter 6.8 of Division 20 of the Health and Safety Code. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including polycyclic aromatic hydrocarbons (PAHs), remain in the soil and groundwater in and under portions of the Property, the Draft Removal Action Workplan provides that a deed restriction be required as part of the site remediation. The Department circulated the Removal Action Workplan, together with a draft negative declaration pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. for public review and comment. The Removal Action Workplan and the negative declaration, were approved by the Department on July 20, 1998. Subsequently, the Department amended the Removal Action Workplan by finalizing an Explanation of Significant Differences on July 13, 2001. Remediation included removal of the top two feet of soil throughout the Property and installation and maintenance of a minimum two feet clean soil cover ("Cap") over the Property. A layer of landscape fabric was placed above the remaining contaminated soils to act as a visual indication of when contaminated soil has been reached.

1.03. As detailed in the Removal Action Workplan and the subsequent Explanation of Significant Differences, as approved by the Department on July 20, 1998 and July 13, 2001 respectively, all or a portion of the subsurface soils below the Cap contain hazardous



substances, as defined in H&SC section 25316, which include polycyclic aromatic hydrocarbons (PAHs). Based on the Removal Action Workplan and the subsequent Explanation of Significant Differences the Department concluded that use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable health risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if limited to park or open space use.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.



3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.



4.02. Soil Management

- (a) The Owner shall provide the Department written notice at least fourteen (14) days prior to any activities that will disturb the soil below the Cap (e.g., excavation, grading, removal, trenching, filling, earth movement or mining). Any such activities must comply with a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) No notice shall be required for activities that temporarily disturb only the top 2 feet of soil. However, at the conclusion of such activities, the Owner is required to maintain at least two feet of clean soil above the contaminated layer.
- (c) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.03. Non-Interference with Cap. Covenantor agrees:

- (a) All uses and development of the Capped Property shall preserve the integrity of the Cap.
- (b) The Cap shall not be altered without written approval by the Department, except as allowed in section 4.02 of this Covenant.
- (c) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of the discovery of any such disturbance and within twenty (20) working days after the completion of any repairs. Timely and accurate notifications by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.



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4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. This Covenant shall be enforceable by DTSC pursuant to Health and Safety Code, Division 20, Chapter 6.5, Article 8 (commencing with 25180).

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.



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ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Mateo within thirty (30) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

City of Daly City
333 90th Street
Daly City, California 94015

To Department:

Barbara J. Cook, P.E., Chief
Northern California - Coastal Cleanup Operations Branch
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, CA 94710



Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.
IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: City of Daly City

By: _____

Title: John C. Martin, City Manager

Date: SEPTEMBER, 25, 2002

Department of Toxic Substances Control

By: _____

Title: Barbara J. Cook, P.E., Chief

Northern California

Coastal Cleanup Operations Branch

Date: 10/8/2002



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ALL-PURPOSE ACKNOWLEDGMENT

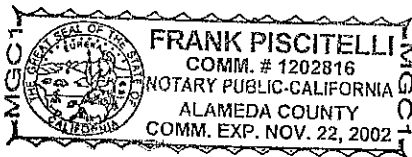
State of California

County of ALAMEDA } SS.

On 10/8/02 before me, FRANK PISCITELLI,
(DATE) (NOTARY)

personally appeared BARBARA JEAN CAK
SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

OTHER



STATE OF CALIFORNIA)

)

COUNTY OF San Mateo)

On this 25th day of September, in the year 2002,

before me ***Eseta U. Sakkal, Notary Public***, personally appeared

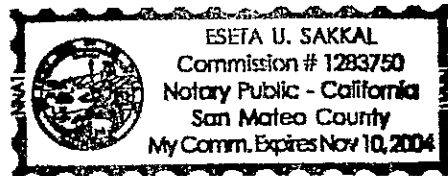
John C. Martin

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Eseta U. Sakkal



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ZONING

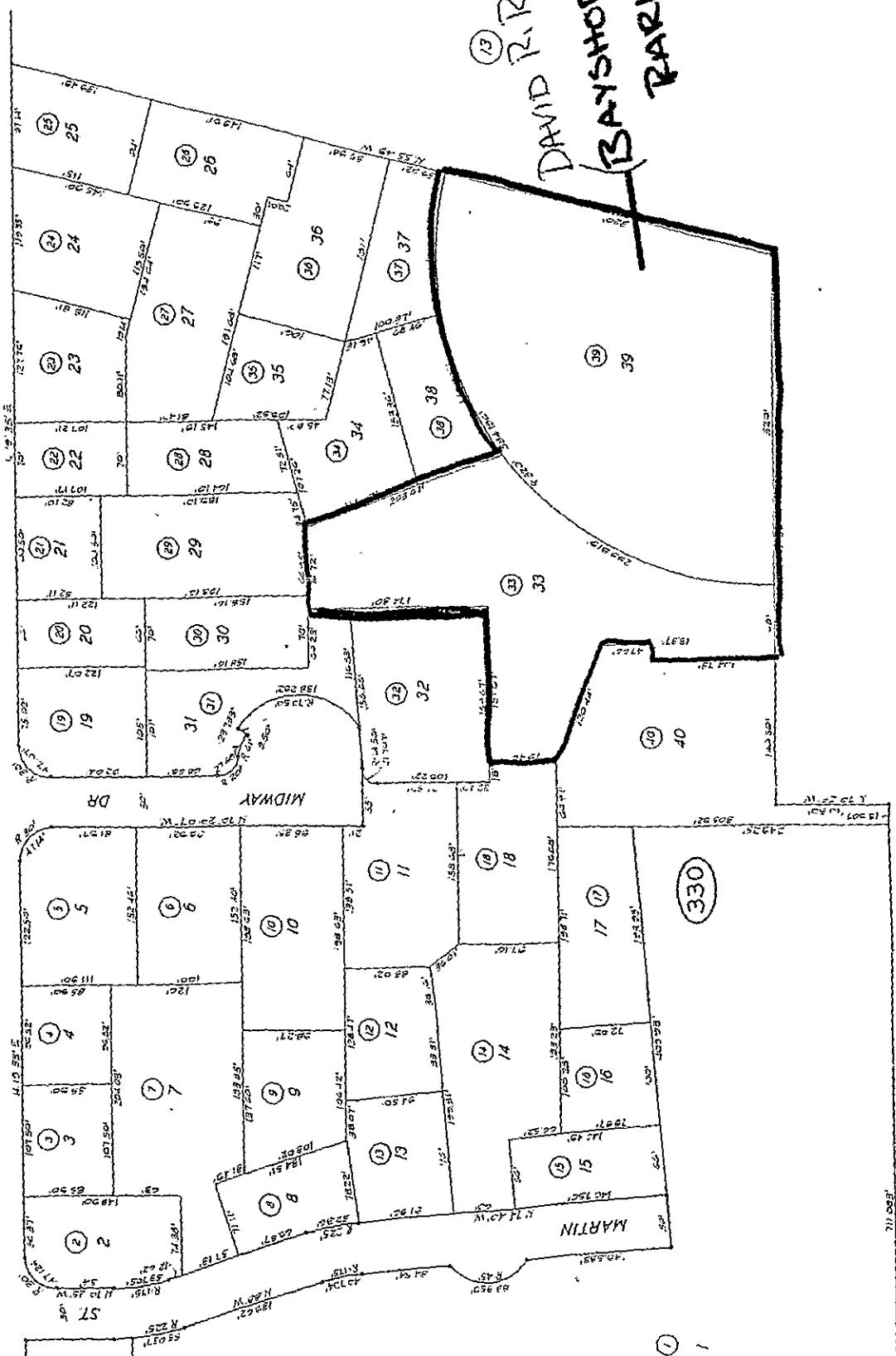
PARTRIDGE ST.

11

TAX CODE AREA

SCHWERN

STREET



DAVID R. ROWE
(BAYSHORE PARK)

MIDWAY VILLAGE RSM 91/44-48

ASSESSOR'S MAP COUNTY OF SAN MATEO CALIF.



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